

USE OF SAMPLE CHECKLIST

This sample checklist is for informational and training purposes only. It is not intended to be, nor should it be used as, a substitute for specific legal advice regarding the appropriate content of your Company's checklist. Recipients are strongly encouraged, and specifically direct to, seek legal advice from counsel for the Company before making any revisions to the Company's current policies or procedures.

HUMAN RESOURCE'S/SUPERVISOR'S CHECKLIST **FOR FMLA ABSENCES**

1. Be alert to any information about requests for time off or absences that ***might qualify as FMLA absences***.

Remember that an employee (or a family member of the employee) simply has to provide enough information about the situation (orally or in writing) for the employer *to suspect it might* be an FMLA situation. The employee does not need to mention the FMLA.

The following absences *might* qualify as FMLA absences (including absences for work-related injuries and non-work-related injuries):

- a. Absence of 4 or more days consecutive days in same work week.
- b. Absence the first 2 or last 2 days of the same work week.
- c. Absence on Friday and absence on following Monday for same medical condition.
- d. Absence on 4 or more separate (but not consecutive) dates for the same medical reason (especially if all such absences occur within the same 60-day period).

2. ***Ask*** the employee ***for more information*** when you think it *might* be an FMLA absence.

Once an employer thinks an absence *might* be for an FMLA reason, it is the employer's duty to ask the employee for more information. You can ask the employee directly any questions you want that are related to the need for time off. HIPAA's privacy restrictions do *not* apply to your inquiries.

You can ask:

- a. What is the condition? What is the diagnosis?
- b. Why do you have to be absent? Is it really medically necessary?
- c. How long will you be absent? When will you return to work?
- d. Can you work with restrictions or modified duty?
- e. Who is your doctor?

3. Be alert to ***when*** the information is provided.

An employee must give the following notice:

- a. If the need for time off is foreseeable, at least 30 days advance notice.
 - b. If the need for time off is not foreseeable, as much notice as reasonably possible (usually within 2 business days of learning of the need for time off).
4. ***Enforce call-in procedures*** and ***maintain communications*** with the employee when he/she is absent.
- a. Remind the employee of your call-in procedures for absences and tardies.
 - b. When the employee calls in absent, ask:
 - (1) What are your symptoms?
 - (2) Exactly why are you unable to work today?
 - (3) Have you called the doctor? Do you have a doctor's appointment?
 - (4) What has your doctor told you? Any drugs prescribed? Any restrictions on your activities?
 - (4) How long will you be absent?
 - (5) Are you able to work part of the day? If not, why not?
 - c. If an employee has a 1 or 2-day absence due to illness or is on intermittent FMLA leave, you may ask:
 - (1) How are you doing?
 - (2) When will you be returning to work?
 - (3) Have you seen the doctor? Have you called the doctor?
 - (4) What have you been doing at home to ensure your recovery?
5. ***Document any communications*** with the employee about absences that might be FMLA.
- a. Write down exactly what the employee tells you (and note the date and time).
 - b. Have voicemail messages transcribed (including date and time).
6. Be attuned to ***suspicious activity***.
- a. Watch attendance patterns (e.g., absences that occur too frequently on the same day of the week like Fridays and Mondays).
 - b. Be alert to inconsistencies (e.g., employee has asked for a vacation day, request denied, and then employee all of a sudden needs an FMLA absence that same day).
 - c. Listen to the employee grapevine (in some cases, the employee who took the day off tells co-workers how he/she intends to spend or spent the day off engaged in some non-FMLA activity).
7. ***Note FMLA absences*** and ***non-FMLA absences on disciplinary forms***.

“I acknowledge that none of the absences mentioned qualified as FMLA absences. I also acknowledge that my absences on the following dates (_____) were treated as FMLA absences and were not counted against my attendance record.”

ABSENCES FOR A “SERIOUS HEALTH CONDITION”

1. Conditions Involving In-Patient Care:

- a. Overnight stay in hospital, hospice, or residential medical care facility
- b. Any subsequent treatment and recovery in connection with the in-patient care

Examples: Emergency hospitalization, scheduled surgery, drug or alcohol rehabilitation

2. Conditions Requiring Multiple Treatments:

- a. Treatment necessary to prevent incapacity
- b. Treatments are normally scheduled in advance and for a specific duration

Examples: Chemotherapy, radiation, physical therapy, dialysis

3. Irreversible Permanent Conditions:

- a. Supervision by a health care provider is required
- b. But no active treatment is required, as it would probably not be effective

Examples: Alzheimer’s, severe stroke, terminal stages of a disease,

4. Pregnancy-Related Conditions:

- a. During pregnancy, or
- b. Related to recovery following childbirth
- c. 12 weeks includes both time used before and after childbirth (i.e., employee is not entitled to 12 weeks FMLA leave after birth if has used other FMLA time during relevant period of time)

Examples: Pre-natal visits and tests, severe morning sickness, childbirth (serious health condition automatic for 6 weeks after natural childbirth; 8 weeks after C-section)

5. Temporary, Non-Chronic Conditions:

- a. Must last 4 or more consecutive calendar days
- b. Requires treatment twice by a health care provider, OR treatment once plus regiment of continuing treatment (usually prescribing drugs is enough)

Examples: Strep throat, severe flu, pink eye, chicken pox, broken bones, etc.

6. Chronic Conditions:

- a. Results in recurring episodes of incapacity (each usually lasting a partial day, 1 day, or less than 4 days)

- b. Requires “periodic” treatment by a health care provider

Examples of Chronic Physical Conditions:

Migraines, asthma, arthritis, bronchitis, fibromyalgia, diabetes, epilepsy, hypertension, allergies, sleep apnea

Examples of Chronic Psychological Conditions:

Depression, anxiety, bi-polar disorder, manic-depressive disorder, post-traumatic stress disorder

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